

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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**Illinois Commerce Commission
On Its Own Motion**

**Requirements governing the form and
content of contract summaries for the
2000 neutral fact-finder process under
Section 16-112(c) of the Public Utilities
Act.**

00-0007

NICOR ENERGY, L.L.C.'S REPLY BRIEF

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I. INTRODUCTION

Nicor Energy, L.L.C. (“Nicor Energy”) requests the Illinois Commerce Commission (“ICC” or “the Commission”) take the following necessary steps to ensure that the Neutral Fact Finder (“NFF”) calculates appropriate market values for use in the calculation of transition charges (“CTCs”) and the Power Purchase Option (“PPO”):

- Adopt Nicor Energy’s proposal for the use of historical day-ahead pricing for calculation of CTCs for unbundling purposes;
- Do not require separating energy and capacity components for contracts that are priced on a \$/mWh basis.

Most parties to this proceeding agree that the NFF process is not the ideal methodology for determining the market values to be used in calculating transition charges or the PPO charges. (See ComEd Ex. 3 at 3; NewEnergy Ex. 2 at 5; Ameren Ex. 2.0 at 2; ComEd Brief at 6; Nicor Energy Brief at 1.) As stated almost unanimously by most parties to this proceeding, the calculation of CTCs in bundled contracts results in a circular process that perpetuates past market values. However, the appropriate methodology for solving this quagmire vary between utilizing tariffed CTC values, using actual market forwards, and Nicor Energy’s proposal of day-ahead pricing. The Commission should note the perpetuation of previous NFF values associated with reporting bundled retail contracts and should adopt an appropriate methodology to eliminate the problems.

II. TO CALCULATE TRANSITION CHARGES FOR SUBTRACTION FROM BUNDLED RETAIL CONTRACTS, THE COMMISSION SHOULD ADOPT NICOR ENERGY’S METHOD OF UTILIZING DAY-AHEAD PRICING.

According to section 16-112(c) of the *Electric Service Customer Choice and Rate Relief Law* of 1997 (“the Act”), reporting entities must deduct two primary components from retail bundled rate contracts: delivery service charges (“DSTs”) and transition charges (“CTCs”). Perhaps the single most contentious issue in this proceeding concerns what method should be adopted for deducting CTCs from the original bundled contract. Many opinions abound, but it is near unanimous that the use of tariffed CTC values produces a circular equation that cannot be solved. (See *inter alia* ICC Brief at 6.)

The issue is what market value should be used in estimating transition charges when performing the unbundling calculation required by 16-112(c). Staff recommends the use of current NFF market values, which are incorporated in the tariffed CTC charges (together with the mitigation factors for the appropriate years), be used in the unbundling calculation. (Staff Ex. 1.0 at 8-9; Staff Ex. 2.0 at 3.) ComEd agrees with Staffs recommendation. (Tr. 62-63.)

The Illinois Industrial Energy Consumers (“IIEC”) aptly stated that the Commission and the NFF should take great care to ensure that CTCs used in unbundling retail contracts are properly calculated as proscribed by law. (IIEC Brief at 7.) IIEC does support the use of tariffed CTCs for unbundling purposes, and provides examples where the CTC value derived from tariffed CTCs does not result in a circular equation. (See *generally* IIEC Ex. 1.) However, IIEC does state that “[i]f the transition charge properly is based on the contract rate, the residual market value to be reported will reflect a combination of the prior year NFF value and some portion of the mitigation amount.” (IIEC Brief at 11.) While IIEC’s analysis may be correct from a technical viewpoint, using tariffed CTCs may result in a bias towards previous NFF values. (See Nicor

Energy Ex. 1 at 3-4; Nicor Energy Ex. 2 at 2.) As illustrated in Ameren's testimony and briefs, the NFF values for the year 2000 do not reflect an accurate value for power and energy in the marketplace. (Ameren Ex. 1.0 at 3.)

Illinois Power ("IP") suggested using actual market forwards, referring to price quotes used at the time of contracting, for calculating CTCs from bundled contracts. (See IP Ex. 1.) For those situations where market value assumptions were not used, or presumably not easily ascertained, IP suggests these bundled contracts be eliminated from consideration by the NFF. (IP Ex. 1.1 at 4.) While IP's solution may solve the circularity issue described by various parties, eliminating some bundled contracts from submission to the NFF does not appear to be consistent with the Act. (See 220 ILCS5/16-112(c)) The use of market forwards has merits, but using bundled contracts, even with tariffed CTCs, will provide at least a modicum of relevant information for the NFF to consider in their contemplation of market value. However, Nicor Energy's proposal uses objective data, and injects an actual market value into the process that will assist the NFF with unbundling contracts appropriately.

ComEd and Staff suggested that utilizing Nicor Energy's proposal of a market-driven pricing mechanism (day-ahead data) introduces an element of subjectivity into the process. (ComEd Brief at 8; Staff Ex. 2.0 at 3.) While both Staff and ComEd admit that day-ahead historic data is objective (Larson, Tr. at 52; ComEd Brief at 8), the argument that utilizing such data allows the reporting entity to pick its market value becomes meaningless as the objective data would be available for all reporting entities to utilize for unbundling contracts. Simply put, utilizing day-ahead pricing, because the data is

objective, does not infuse a significant element of subjectivity into the process. (*See also* ComEd Brief at 8.)

Similarly, Staff and IP agree that Nicor Energy's proposal breaks the circularity problem, but state that no party to the contract agreed to or even contemplated the use of such a valuation. (*See* Staff Brief at 7; IP Ex. 1.3 at 5.) This argument misses the point. Certainly, the parties did not contemplate unbundling contracts for NFF assessment of market value when they entered into the agreement to buy or sell power and energy, whether that process included use of day-ahead pricing or tariffs for determining a transition charge value. The goal of this process is to give the NFF the tools necessary for determining a market value that reflects the true and fair market value of power and energy, or in simpler terms, reality. Utilizing historic day-ahead pricing simply allows for a better measure to calculate CTCs in this process. In addition, the use of day-ahead pricing does not result in the perpetuation towards, or creates a bias towards, previous NFF values.

Nicor Energy submits that the language of Section D (3) Treatment of Bundled Service Contract Prices should be modified as follows:

As required by Section 16-112(c), reporting entities are to deduct delivery service charges (including transition charges utilizing historical day-ahead pricing for deliveries into ComEd's system by applying the day-ahead pricing as the market value rate, and determining the transition charge using the bundled rate minus the day-ahead pricing figure as the market value minus the delivery service charges. ~~including transition charges as defined and set forth in applicable tariffs that are in effect at the time the reporting entity's data is submitted~~), and charges for services, if any, other than the provision of power and energy or delivery services, from bundled service contract prices reported to the NFF....

The use of day-ahead pricing to determine CTCs would further the goal of constructing reasonable market values through the NFF process.

III. IN REPORTING CONTRACTS EXPRESSED IN TERMS OF \$/MWH, THE REPORTING ENTITY SHOULD PROVIDE IDENTICAL PRICING PARAMETERS TO THE NFF INSTEAD OF ARTIFICIALLY SPLITTING CAPACITY AND ENERGY PRICES.

Sections D(4) and E of the 2000 NFF process Instructions require reporting entities to unbundle contracts into separate capacity and energy components. (Staff Ex. 1.0, Sch. B at 8-9.) Nicor Energy has stated that conducting an arbitrary and administratively burdensome calculation of capacity and energy values does not assist the NFF in its determination of market values for Summer and Non-Summer peak and off-peak periods. (Nicor Energy Ex. 1 at 5.) People's Energy Services ("PE Services") agrees and stated that reporting equal prices for all hours will provide the NFF more accurate information than could any type of artificial manipulation. (PE Services Brief at 3.)

For those bundled contracts that are priced on a \$/mWh basis and do not separate capacity and energy charges, no artificial mechanism should be employed to separate the charges. As no party has suggested an appropriate unbundling of capacity and energy methodology, the Commission should instruct reporting entities to provide the NFF with identical terms found in the contract. To do otherwise would distort the reporting.

Therefore, for those contracts that are based on a price per kWh or mWh basis, or "all-in" contracts, separating the capacity and energy charges should not be employed except in cases where separate energy and capacity components are explicitly provided for in the contracts. In all-in contracts, the reporting should be filed with the NFF under D(4) or "Energy Pricing" found in the Instructions. For those contracts that contemplate both energy and capacity components, separate entries required by Sections D(4) and E should be undertaken.

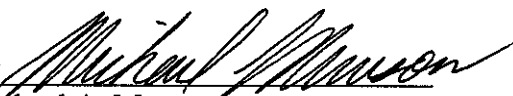
IV. CONCLUSION

For the reasons set forth in its Initial and Reply Briefs, Nicor Energy, L.L.C. respectfully requests that the Commission enter an Order in this docket consistent with the following:

1. Modify Staffs Instructions to include appropriate recommendations contained in Nicor Energy, L.L.C.'s Reply Brief at 5;
2. Require reporting entities to report "all-in" contracts under Energy Pricing, found under Section D (4) of the Instructions;
3. Enter a notice of rulemaking in conformance with the arguments presented.

Respectfully submitted,

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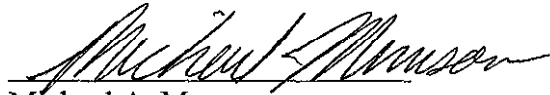
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CERTIFICATE OF SERVICE

I, Michael A. Munson, hereby certify that a copy of Nicor Energy, L.L.C.'s Reply Brief filed in the above-captioned proceeding was served on the person or persons on the attached service list by depositing same in the United States Mail depository with proper postage prepaid thereon, by Federal Express, by facsimile, by hand-delivery or by electronic mail on March 23, 2000.



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